River Oak Center for Children, Inc. *and* Social Services Union, Local 535 Service Employees International Union.[1] Case 20–CA–31640–1

December 9, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

Pursuant to a charge filed by the Social Services Union, Local 535, Service Employees International Union (the Union), on December 12, 2003, the General Counsel of the National Labor Relations Board issued a complaint on March 30, 2004, alleging that the Respondent, River Oak Center for Children, Inc., has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to furnish necessary and relevant information. On April 9, 2004, the Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and raising certain affirmative defenses.

On April 30, 2004, the Respondent filed a Motion for Summary Judgment and supporting documents. On May 24, 2004, the General Counsel filed a Motion for Summary Judgment and Opposition to Respondent's Motion for Summary Judgment. On June 18, 2004, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motions should not be granted. On June 30, 2004, the Respondent filed a response and brief in opposition to the General Counsel's Motion for Summary Judgment.

For the reasons explained below, we deny the Respondent's Motion for Summary Judgment and grant the General Counsel's Cross-Motion.

Ruling on Motions for Summary Judgment

The complaint alleges that the Respondent has unlawfully refused to provide the addresses and telephone numbers of the employees in the bargaining unit, as requested in writing by the Union on about August 4, 2003, during negotiations for a new collective-bargaining agreement.

We find that there are no issues warranting a hearing because the Respondent has admitted all relevant factual allegations. The Respondent admits that the Union requested that it provide the addresses and phone numbers of the unit employees and that it has refused to provide the requested information.

The Respondent makes three principal arguments in support of its Motion for Summary Judgment. We find that those arguments do not support its defense.

First, the Respondent contends that it has already provided the unit employees' addresses to the Union, as required by the parties' collective-bargaining agreement, and that the Union had adequate alternative means to obtain the phone numbers. Thus, according to the Respondent, the information the Union sought from it was not "necessary and relevant." We do not agree.

It is well established that the addresses and phone numbers of bargaining unit employees are presumptively relevant for purposes of collective bargaining and must be furnished upon request of the bargaining representative.[2] The Respondent contends that it has already provided the Union with the requested information: in the late 1980s, prior to a representation election, it furnished the Union with a list of the addresses of all then-employed unit employees; since that time, it has complied with the collective-bargaining agreement's requirement that it supply the Union, on a monthly basis, with the addresses of any new hires.[3] Assuming without finding that the Respondent has consistently honored that contractual requirement, it nonetheless has not fulfilled its obligation to provide current employee addresses and telephone numbers[4] to the Union in response to the Union's August 4 request. The Union is entitled to updated addresses and phone numbers, which may well have changed over the 15-year period that the Respondent was supplying information.[5]

Second, the Respondent asserts that even if the requested information was relevant, it was not required to provide the information because there were alternative methods available to the Union to obtain that information. The Respondent relies on several circuit court cases for this assertion, including *JHP & Associates, LLC v. NLRB*, 360 F.3d 904 (8th Cir. 2004), *Grinnell Fire Protection Systems Co. v. NLRB*, 272 F.3d 1028 (8th Cir. 2001), and *Chicago Tribune Co. v. NLRB*, 79 F.3d 604

[1] We have amended the case caption to reflect the disaffiliation of the Service Employees International Union from the AFL–CIO effective July 25, 2005.

[2] See, e.g., *La Gloria Oil & Gas Co.*, 338 NLRB 858 (2003); *Baker Concrete Construction*, 338 NLRB No. 48 (2002) (not reported in bound volumes), enfd. 73 Fed. Appx. 12 (5th Cir. 2003); *Maple View Manor*, 320 NLRB 1149, 1151 (1996), enfd. mem. 107 F.3d 923 (D.C. Cir. 1997).

[3] It is not clear that the Respondent has consistently complied with the requirement to report addresses of new hires. Although the Respondent claims that it has complied with this requirement since 1998, record evidence proves only that it has complied since 2000.

[4] The Respondent does not claim that it has at any time supplied the Union with the unit employees' telephone numbers.

[5] *Watkins Contracting, Inc.*, 335 NLRB 222 fn. 1 (2001); *Long Island Day Care Services*, 303 NLRB 112, 130 (1991).

(7th Cir. 1996). Those cases, however, are distinguishable and not controlling. Each involved a union's request for the addresses of striker replacements or nonstriking union employees in the context of an ongoing strike and labor unrest, where there were threats of violence and the potential for misuse of the information. Here, in contrast, the request was made in the context of the parties' peaceful renegotiation of a collective-bargaining agreement. Moreover, controlling Board precedent is to the contrary.[6]

Third, the Respondent contends that it was not required to furnish the requested information because employees' addresses are subject to a contractual right of privacy and confidentiality, and that the unit employees' privacy rights outweigh the Union's need for the information.[7]

Blanket claims of confidentiality in response to requests for relevant information are disfavored.[8] In analyzing the lawfulness of requests for relevant, but assertedly private or confidential information, the Board balances the union's need for the information against any "legitimate and substantial" confidentiality interests. The party asserting privacy or confidentiality has the burden of proof, as well as a duty to seek an accommodation.[9]

Here, the Respondent contends that portions of the collective-bargaining agreement pertaining to personnel files give rise to a legitimate and substantial employee privacy interest.[10] According to the Respondent, the parties' agreement "acknowledges that the requested information is confidential" and cannot be disclosed to the Union without the employees' written consent. That assertion, however, is inconsistent with section 2.E of the collective-bargaining agreement, which mandates disclosure to the Union of new employees' addresses and does not require the employees' written consent. Nor is there evidence that the Respondent obtains written employee consent before it complies with section 2.E. In fact, the cited portions of section 11 do not proscribe disclosure of information contained within personnel files; rather, they regulate who is privy to employee personnel files and their contents and the conditions under which access to the information may be granted. Although otherwise detailed, the cited provisions are silent regarding disclosure to the Union. Thus, it cannot be said that the Union waived its right to request employee names and telephone numbers by entering into the collective-bargaining agreement.[11]

Finally, the Respondent contends that the California Constitution and statutes require it to keep personnel records confidential in the circumstances presented here.

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[6] See, e.g., *Hospitality Care Center*, 307 NLRB 1131, 1135 (1992) (employer may not refuse to provide requested relevant information on the grounds that the union may have alternative means to obtain it, even if through a contractual right), enf. denied on other grounds 35 F.3d 828 (3d Cir. 1994).

Even under the precedent cited by the Respondent, we would find that Respondent has failed to demonstrate the existence of reasonable alternative means for the Union to obtain the requested information. The Respondent contends that the Union could have obtained the requested information through the union stewards and by using the union bulletin board and the Respondent's internal mail system. Regarding the stewards, there are only three stewards for 80 employees, in a three-shift operation. It is not clear whether there is a steward present on each shift. The designated union bulletin board is actually controlled by the Respondent, which has reserved the right to review and approve all material before it is posted. There is no evidence that the Respondent would approve the Union's using the bulletin board for soliciting the requested information. Finally, the Respondent's policy is clear that the Union may use the internal mail system solely to announce union meetings.

[7] Sec. 11 of the collective-bargaining agreement, on which the Respondent relies, does not expressly set forth the Union's right of access to employee telephone numbers. Thus, to the extent that the Respondent is arguing that the contract acts as a waiver of the Union's right to obtain employee information other than as specified, that argument is inapplicable to the request for telephone numbers.

[8] See, e.g., *Wayne Memorial Hospital*, 322 NLRB 100, 102 (1996); *New Jersey Bell Telephone Co.*, 289 NLRB 318, 318–319 (1988), enfd. 872 F.2d 413 (3rd Cir. 1989); *Pfizer, Inc*,. 268 NLRB 916, 919 (1984), enfd. 763 F.2d 887 (7th Cir. 1989).

[9] *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 315, 318 (1979); *SBC California*, 344 NLRB No. 11, slip op. 4 (2005); *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991). Here, the Respondent made no effort to seek such an accommodation.

[10] In relevant part, those provisions are:

> 11.A [non-exclusive list of information and documents that may be contained in employee personnel files] . . . Access to the personnel file is limited to the employee, the employee's supervisor, the President/Chief Executive Officer, the Human Resources [sic] and other Human Resources staff. The following persons shall also have access to such records: An attorney or designee . . . with the written consent of the employee . . . Supervisory employees . . . the Agency's attorney or other appropriate representative when records are needed in connection with any action brought by the employee against the Agency or other persons acting in compliance with federal, state of [sic] local laws such a auditors, equal employment opportunity investigators, etc.
>
> 11.G The Employer respects the privacy of its employees and strives to insure [sic] confidentiality of information about employees and former employees. Information is not to be improperly released either within the Agency or to external sources. Any calls, documents, or questions concerning . . . home address and telephone numbers . . . or any other confidential matters shall be referred to the Human Resources Director or his/her designee.

[11] *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983) (waiver of a statutory right must be clear and unmistakable).

In view of our disposition of this matter, we need not reach the issue, raised by the General Counsel, that disclosure of personnel information to the Union is authorized by the provision in sec. 11.A of the collective-bargaining agreement providing for access to personnel information by "other persons acting in compliance with federal, state of [sic] local laws."

The Board and the courts have decisively rejected that argument.[12]

Accordingly, we find that the Respondent has not shown that it has a legitimate privacy or confidentiality claim justifying its refusal to provide the requested information. Having found no merit in any of the Respondent's defenses, we deny the Respondent's Motion for Summary Judgment.

In the General Counsel's Motion for Summary Judgment, he contends that under extant precedent the information requested by the Union is relevant and necessary, that the Respondent has not established any affirmative defenses, and therefore that the Respondent must supply the information. For the reasons discussed above, we agree. Accordingly, we find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish the requested information and we therefore grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a nonprofit corporation, with offices and places of business in Sacramento, California, has been engaged in business as a health care institution providing services to severely emotionally disturbed children. During the calendar year ending December 31, 2003, the Respondent, in conducting its business operations, derived gross revenues in excess of $250,000, and purchased and received at its Sacramento, California facilities goods and materials valued in excess of $5,000 that originated from points located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act. We also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since at least 1991, and at all material times, the Union has been the designated exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, of the following appropriate unit of the Respondent's employees:

> Residential Counselor, Floating Residential Counselor, Night Program Aide, On-Call Counselor, Accounting Clerk, Receptionist, Medical Clerk, Service Coordinator, Maintenance Worker, Special Education Assistant, Floating Special Education Assistant, Afterschool Assistant, and Preschool Assistant.

About August 4, 2003, the Union, in writing, requested that the Respondent furnish it with the addresses and telephone numbers of all bargaining unit employees. The requested information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about September 3, 2003, the Respondent has failed and refused to furnish the Union with the requested information. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on or after September 3, 2003, to furnish the Union with requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive bargaining representative of unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, and to furnish the requested information to the Union.

ORDER

The National Labor Relations Board orders that the Respondent, River Oak Center for Children, Inc., Sacramento, California, its officers, agents, successors, assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish the Social Service Union, Local 535, Service Employees International Union, with information that is relevant and necessary to its role as the exclusive bargaining representative of the following unit:

> Residential Counselor, Floating Residential Counselor, Night Program Aide, On-Call Counselor, Accounting Clerk, Receptionist, Medical Clerk, Service Coordinator, Maintenance Worker, Special Education Assistant,

[12] See *NLRB v. Diversified Contract Services*, Case No. C 87 4274 SC (1987) (rejecting argument that California privacy laws privileged employer's refusal to turn over disciplinary records, evaluations, and personnel files subpoenaed in a Board proceeding); *A-Plus Roofing, Inc.*, 295 NLRB 967, 974 (1989), enfd. mem. No. 90–70015 (9th Cir. July 12, 1990), (rejecting employer's "frivolous contention" that an employer violates an employee's constitutional right to privacy by furnishing to a labor organization which represents the employee the employee's address); *Holiday Inn on the Bay*, 317 NLRB 479, 483 (1985) (noting failure of employer to cite any California case law prohibiting disclosure of personnel information to a bargaining representative).

Floating Special Education Assistant, Afterschool Assistant, and Preschool Assistant.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union the information that it requested on August 4, 2003.

(b) Within 14 days after service by the Region, post at the facility set forth above copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 3, 2003.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 9, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[13] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to furnish the Social Service Union, Local 535, Service Employees International Union information that is relevant and necessary to its role as the exclusive bargaining representative of the following unit of our employees:

Residential Counselor, Floating Residential Counselor, Night Program Aide, On-Call Counselor, Accounting Clerk, Receptionist, Medical Clerk, Service Coordinator, Maintenance Worker, Special Education Assistant, Floating Special Education Assistant, Afterschool Assistant, and Preschool Assistant.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union the information it requested on August 4, 2003.

RIVER OAK CENTER FOR CHILDREN, INC.